

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## WILD FISH CONSERVANCY,

CASE NO. 21-cv-169

Plaintiff,

ORDER REQUESTING ADDITIONAL  
BRIEFING AND RENOTING MOTION  
FOR ENTRY OF CONSENT DECREE

V.

WASHINGTON DEPARTMENT OF FISH & WILDLIFE; KELLY SUSEWIND, in his official capacity as the Director of the Washington Department of Fish & Wildlife; BARBARA BAKER, in her official capacity as Chair of the Washington Fish & Wildlife Commission; MOLLY LINVILLE, in her official capacity as Vice Chair of the Washington Fish & Wildlife Commission; JAMES ANDERSON, in his official capacity as a member of the Washington Fish & Wildlife Commission; LORNA SMITH, in her official capacity as a member of the Washington Fish & Wildlife Commission; JOHN LEHMKUHL, in his official capacity as a member of the Washington Fish & Wildlife Commission; TIM RAGEN, in his official capacity as a member of the Washington Fish & Wildlife Commission; MELANIE ROWLAND, in her official capacity as a member of the Washington Fish & Wildlife Commission; and KIM THORNBURN, in her official capacity as a member of the Washington Fish & Wildlife Commission,

## Defendants.

1        This matter comes before the Court on the parties' Motion For Joint Entry of Consent  
 2 Decree. Dkt. No. 73. In its Second Amended and Supplemental Complaint, Plaintiff alleges  
 3 Defendants violated the Endangered Species Act (ESA) by "implement[ing] and funding" various  
 4 hatchery programs throughout the Puget Sound and Columbia River basin. Dkt. No. 49 at 17-18,  
 5 24. Plaintiff seeks declaratory and injunctive relief for Defendants' alleged violations of the ESA.  
 6 Dkt. No. 49 at 24-25.

7        Before the parties filed their proposed Consent Decree, the Nooksack Indian and Tulalip  
 8 Tribes, Squaxin Island Tribe, Lummi Indians of the Lummi Reservation of Washington, and the  
 9 Puyallup Tribe of Indians (collectively, "Prospective Intervenors") filed motions to intervene for  
 10 a limited purpose. Dkt. Nos. 50, 56, 57, 64. Prospective Intervenors request intervention under  
 11 Fed. R. Civ. 24(a) for the limited purpose of filing motions to dismiss under Fed. R. Civ. P.  
 12 12(b)(7) and Fed. R. Civ. P. 19. *See id.* Generally, Prospective Intervenors assert the relief sought  
 13 by Plaintiff could affect fish resources to which they have treaty rights. *See id.* Prospective  
 14 Intervenors argue that they should be permitted to intervene because Defendants would not defend  
 15 their respective rights to the hatcheries at issue. *See id.* Plaintiff did not object to intervention by  
 16 Intervenors. *See* Dkt. Nos. 54, 70, 71, 72.

17       The proposed Consent Decree's terms impose obligations on the parties that do not appear  
 18 to implicate any of the Prospective Intervenors directly but pertain to fish and numerous hatcheries.  
 19 *See* Dkt. No. 73 at 6-9; Ex. A. The parties' proposed Consent Decree states that it "is a full and  
 20 complete settlement and release of all ESA violations alleged by the Conservancy in the Second  
 21 Amended and Supplemental Complaint, the First Notice Letter, and the Second Notice Letter that  
 22 occurred prior to and through the date of entry of this Consent Decree." Dkt. No. 73 at 10-11.

23       In their motion, the parties state they "are noting this motion as a third Friday motion to  
 24 provide an opportunity for interested parties to respond as appropriate." Dkt. No. 73 at 2. Friday,

1 June 16, 2023, was the noting date for the parties' motion. Dkt. No. 73. But to date, Prospective  
2 Intervenors have not filed any response. *See* Dkt.

3 The Court ORDERS Prospective Intervenors to provide briefing on the following two  
4 issues:

5 (1) Whether Prospective Intervenors' motions to intervene for the limited purpose of filing  
6 motions to dismiss this lawsuit are moot in light of the parties' Motion For Joint Entry  
7 of Consent Decree (Dkt. No. 73);  
8 (2) If Prospective Intervenors contend their motions to intervene are not moot, please  
9 provide legal authority and argument in response to the parties' Motion For Joint Entry  
10 of Consent Decree.

11 Prospective Intervenors are ORDERED to file their responses to the Court's questions  
12 within 14 days of entry of this order; Plaintiff and Defendants may file responses within 21 days  
13 of entry of this order. If Prospective Intervenors take no position concerning the proposed Consent  
14 Decree, they should say so. Submissions must not exceed 4,200 words. The Motion For Joint Entry  
15 of Consent Decree is re-noted for July 14, 2023.

16 It is so ORDERED.

17 Dated this 23rd day of June, 2023.

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20 Jamal N. Whitehead  
21 United States District Judge  
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